

October 8, 2011

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

Re: WT 11-65, Applications of AT&T Inc. and Deutsche Telekom AG For Consent To
Assign or Transfer Control of Licenses and Authorizations

Dear Ms. Dortch:

Yesterday, Harold Feld and John Bergmayer of Public Knowledge (PK) spoke by phone with FCC General Counsel Austin Schlick, Wireless Telecommunications Bureau Chief Rick Kaplan, and Senior Counsel to the Chairman for Transactions Renata Hesse. The purpose of the call was the discuss PK's view that AT&T has claimed confidential or highly confidential treatment for information that, were it made public, would not cause it competitive harm and which does not meet the legal standard for confidentiality. PK argued that there needs to be a better process for challenging claims of confidentiality, and more clarity on the legal standard for claims of confidentiality.

As to process, PK argued that while, at present, the Commission permits specific challenges, it has no procedure for describing the showings a challenging party must make, how a party claiming confidentiality should respond to the challenge, and a timeline for Commission action in response to the challenge. This lack of direction makes it difficult for parties seeking to challenge claims of confidentiality, since it requires the challenging party to invent a procedure from scratch, with no idea as to how long it will take the Commission to make a decision on the challenge.

As to the legal standard, PK argued that parties ought only to be able to claim confidentiality for competitive marketplace harms. That is, confidential treatment is appropriate for information that would provide a party's competitors an advantage, but not for information which is already publicly available, or for information that may be damaging to a party's credibility or public case.

Finally, PK recounted that when it sought clearance for its experts to view "Highly Confidential" information, counsel for Applicants contacted PK with objections. Although counsel for Applicants offered to discuss the matter further with PK in an effort to resolve the objections, PK determined it did not have time or resources to pursue the matter and voluntarily withdrew the request for access to material subject to the Second Protective Order. PK stress that Applicants' Counsel behaved appropriately and that this is a necessary balance where highly sensitive information is actually at risk. At the same time, however, it illustrates how excessive use of the "Highly Confidential" designation imposes unfair burdens on parties challenging the merger and limits legitimate examination of the record.

Respectfully submitted,

/s John Bergmayer
Senior Staff Attorney
PUBLIC KNOWLEDGE